

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

REYNALDO RAMIREZ,	§	
	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. C-09-209
	§	
JIM WELLS COUNTY, TEXAS, <i>et al</i> ,	§	
	§	
Defendants.	§	

**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION
TO GRANT IN PART AND DENY IN PART
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

On June 20, 2011, United States Magistrate Judge B. Janice Ellington signed a Memorandum and Recommendation (D.E. 87) recommending that Defendant Martinez's Qualified Immunity Motion for Summary Judgment (D.E. 66) be granted in part and denied in part. On July 5, 2011, Defendant Joe Martinez filed his "Objections to the Magistrate Judge's Memorandum and Recommendation." D.E. 88. The Magistrate Judge's Memorandum and Recommendation, as supplemented herein, is adopted as the Court's own.

Defendant Martinez asserts that the Magistrate erred in failing to consider his state law claims and holding that those claims were not addressed in Martinez's motion. After reviewing Martinez's Motion for Summary Judgment (D.E. 66), the Court holds that the state law claims of official immunity, assault and battery, and false arrest and imprisonment were raised:

In light of the video, Ramirez cannot prove any set of facts that would allow him to prevail on his § 1983 excessive force claim. Ramirez cannot preserve his complaint through his state-law assault and battery claim either. Under Texas law, a peace officer is privileged to use force as reasonably necessary to detain an individual. *Tex. Dept. of Public Safety v. Petta*, 44 S.W.3d 575, 579 (Tex. 2001). As a result, Texas law compels the same result of dismissal on summary judgment.

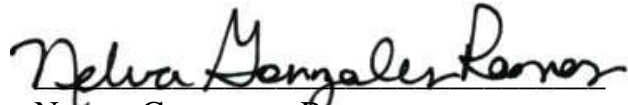
Motion, p. 5 (emphasis added). A state law official immunity claim was addressed at pages 7 to 8 of the Motion and again at page 12, and the state law false arrest and imprisonment claim was raised at page 11.

However, Martinez presented them as claims that rise or fall with the corresponding federal claims, all of which are tied to the significance of the video. Because the Court does not share Defendant's confidence in the conclusive nature of the video, summary judgment on the state law claims, while raised, must fail.

Having reviewed the findings of fact and conclusions of law in the Magistrate Judge's Memorandum and Recommendation (D.E. 87), as well as the pleadings on file and Defendant's objections, and having made a *de novo* disposition of those portions of the Magistrate Judge's recommended disposition to which objections were raised, see *Koetting v. Thompson*, 995 F.2d 37 (5th Cir. 1993), 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b), the Court hereby adopts as its own the findings and conclusions of the Magistrate Judge as supplemented herein.

Accordingly, it is ORDERED that Defendant Martinez's Qualified Immunity Motion for Summary Judgment (D.E. 66) is GRANTED IN PART and DENIED IN PART.

ORDERED this 12th day of September, 2011.

A handwritten signature in black ink, reading "Nelva Gonzales Ramos". The signature is written in a cursive, flowing style. The first name "Nelva" is prominent, followed by "Gonzales" and "Ramos". The signature is positioned above the printed name and title.

NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE